

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

SHIKEB SADDZOAI,
Plaintiff,

v.

DR. SPENCER, et al.,
Defendants.

Case No. 18-04511 BLF (PR)

**ORDER GRANTING
DEFENDANTS' MOTION FOR
SUMMARY JUDGMENT**

(Docket No. 31)

Plaintiff, a state prisoner, filed a *pro se* civil rights complaint under 42 U.S.C. § 1983. The Court found the amended complaint, Dkt. No. 10¹, stated a cognizable claim of deliberate indifference to serious medical needs under the Eighth Amendment against Defendants Dr. Robert Spencer and Nurse Practitioner Amanda Anguelouch at the San Mateo County Jail, Maguire Correctional Facility (“MCF”), and ordered the matter served on Defendants. Dkt. No. 14. Defendants filed a motion for summary judgment on the grounds that Plaintiff has not established the essential elements for a deliberate indifference to serious medical needs claim under the Eighth Amendment as a matter of

¹ All page references herein are to the Docket (ECF) pages shown in the header to each document and brief cited, unless otherwise indicated.

1 law, and they are entitled to qualified immunity. Dkt. No. 31.² Plaintiff was provided five
 2 extensions of time to file an opposition, with the last order granting him a final extension
 3 of time until October 21, 2020. Dkt. Nos. 44, 48, 53, 55, 59. He did not file an opposition
 4 in the time provided. Accordingly, on November 4, 2020, Defendants filed a notice of
 5 Plaintiff's non-opposition to their summary judgment. Dkt. No. 60.

6 Thereafter, Plaintiff filed a letter dated November 8, 2020, requesting another
 7 extension of time due to COVID-19 related lockdowns and limited access to the prison law
 8 library. Dkt. No. 61. The request for additional time, which was filed more than two
 9 weeks after the opposition deadline had expired, is DENIED as the Court made clear in its
 10 last order that no further extensions of time would be granted for the reasons stated therein.
 11 Dkt. No. 59 at 2.

12 For the reasons stated below, Defendants' motion for summary judgment is
 13 **GRANTED.**

14 **DISCUSSION**

15 **I. Statement of Facts³**

16 The underlying events took place while Plaintiff was detained at MCF as of
 17 February 12, 2016, until July 30, 2018, when he was transferred to the California
 18 Department of Corrections. Sheng Decl., Ex. A; Dkt. No. 31-1. Plaintiff was treated at
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 21 ² In support of their motion, Defendants provide the declarations of counsel Paul S. Sheng,
 22 Dkt. No. 31-1, Dr. Kenton Fong, a non-party, Dkt. No. 31-2, and Defendant Dr. Robert
 23 Spencer, Dkt. No. 31-3. Accompanying these declarations are exhibits that include copies
 24 of Plaintiff's records from the San Mateo County Sheriff's Department, excerpts from
 25 Plaintiff's medical records from various institutions, copies of his grievances related to the
 26 relevant medical issues, and copies of unanswered interrogatories, requests for production
 of documents and admissions sent to Plaintiff. Dkt. No. 31-1, Exs. A-CC; Dkt. No. 31-2,
 Exs. A-F; Dkt. No. 31-3, Exs. A-S. Exhibits with a notation "subject to sealing motion"
 accompanying the declarations of Mr. Sheng and Dr. Fong can be found under
 Defendants' Administrative Motion to File under Seal, Dkt. No. 29, which was withdrawn
 and stricken. *See* Dkt. No. 44.

27 ³ Because Plaintiff did not file an opposition or declaration, the Court will take into
 28 consideration the factual allegations in his verified amended complaint. Dkt. No. 10.

1 San Francisco General Hospital for a gunshot wound to his right forearm on February 8,
 2 2016, and then came into MCF's custody on February 12, 2016. Dkt. No. 10 at 4.
 3 According to Plaintiff, he was discharged from the hospital with "medical instructions,
 4 ordering county jail physicians to schedule treatment for surgery with a hand specialist for
 5 damages to [Plaintiff's] dominant hand, and arm, and the attendant pain, and suffering of a
 6 gun[]shot wound." *Id.* Plaintiff also claims that Dr. Fong, a plastic surgeon, referred him
 7 to Stanford for the surgery, but that Defendants Dr. Spencer and Nurse Amanda at MCF
 8 caused unnecessary and excessive delay over a period of two years, resulting in further
 9 pain and suffering, specifically with respect to the following: (1) delaying an EMG test
 10 until December 2, 2016; (2) failing to follow up on a referral to Stanford for surgery as
 11 ordered by Dr. Fong; and (3) failing to act upon his numerous grievance complaints. *Id.* at
 12 4-5. Based on these allegations, the Court found Plaintiff stated a cognizable claim under
 13 the Eighth Amendment for deliberate indifference to serious medical needs. Dkt. No. 14 at
 14 2-3.

15 Defendant Dr. Spencer is the Medical Director of the County of San Mateo
 16 Correctional Medicine. Spencer Decl. ¶ 3; Dkt. No. 31-3. In that role, Defendant Spencer
 17 manages and personally provides medical care to inmates, as well as overseeing and
 18 consulting with Family Nurse Practitioners in connection with their provision of medical
 19 care to inmates at MCF. *Id.* Defendant Spencer is personally familiar with the medical
 20 care provided to Plaintiff while he was incarcerated at MCF from February 2016 through
 21 July 2018. *Id.*

22 Stanford Medical Center ("Stanford") is the tertiary care provider for San Mateo
 23 County Correctional Medicine ("SMCCM"), meaning that if SMCCM is unable to provide
 24 a service, e.g., a specialist consultation, the patient is referred to the secondary care
 25 provider, which is San Mateo Medical Center. Spencer Decl. ¶ 4. If San Mateo Medical
 26 Center is unable to provide a procedure, the patient is referred to the tertiary care provider.
 27 *Id.* However, SMCCM has neither the right nor the ability to compel Stanford to accept a
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1 patient referral for a procedure such as a tendon transfer. *Id.*

2 Plaintiff was booked into MCF on February 11, 2016, after being discharged from
3 San Francisco General Hospital with a gunshot wound to his right arm. Sheng Decl., Ex.
4 A. Care and management of the gunshot wound, such as dressing changes, was provided
5 by SMCCM nursing staff 42 times between February 12, 2016 through April 1, 2016. *Id.*,
6 Ex. B; Dkt. No. 29-1 at 2-9. According to his medical records, Plaintiff received regular
7 treatment at MCF, which included the following: on February 11, 2016, narcotic pain
8 medication was ordered and provided to Plaintiff for pain secondary to his recent gunshot
9 wound injury, Sheng Decl., Ex. C, Dkt. No. 29-1 at 16; on February 15, 2016, Plaintiff had
10 evaluation and treatment for his gunshot wound by a Family Nurse Practitioner (“FNP”),
11 *id.*, Ex. C, Dkt. No. 29-1 at 18-19; and on February 17, 2016, Plaintiff had a follow-up
12 visit with an FNP, and further medication (Gabapentin) was ordered, *id.*, Ex. E, Dkt. No.
13 29-1 at 21. On March 30, 2016, Plaintiff was evaluated at MCF by visiting orthopedist Dr.
14 Paul Linquist, who recommended a referral to plastic surgery. *Id.*, Ex. F; Dkt. No. 29-1 at
15 23. On April 26, 2016, Defendant Spencer saw and evaluated Plaintiff, and ordered an X-
16 ray of his right forearm. *Id.*, Ex. G; Dkt. No. 29-1 at 25.

17 Then on May 2, 2016, Plaintiff had a first-time consultation with Dr. Kenton Fong,
18 the Chief of Plastic and Reconstructive Surgery, at San Mateo Medical Center. Sheng
19 Decl., Ex. H; Dkt. No. 29-1 at 27-28; Fong Decl. ¶ 1. Dr. Fong noted Plaintiff’s complaint
20 of an inability to extend his small (pinky) finger and ring finger and diminished sensation
21 in his middle finger, small finger, and ring finger. Fong Decl. ¶ 3. Plaintiff also reported
22 0/10 pain. *Id.* Dr. Fong assessed Plaintiff with ulnar and radial nerve palsy and ordered an
23 EMG (electromyogram) study to evaluate the injury further. *Id.*, Ex. B; Dkt. No. 29-1 at
24 83-84. Two days later, on May 4, 2016, Plaintiff had an X-ray of his right forearm which
25 showed no fracture, dislocation, subluxation (partial dislocation), periostitis
26 (inflammation), or osteolysis (bone degeneration). Sheng Decl., Ex. I; Dkt. No. 29-1 at 34.

27 On May 16, 2016, Plaintiff had a follow-up visit with Dr. Fong. Fong Decl. ¶ 4.
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1 The EMG had not been completed yet, and Plaintiff otherwise had no change in status at
2 that time. *Id.* Plaintiff reported 0/10 pain during the visit. *Id.*, Ex. C, Dkt. No. 29-1 at 86-
3 87; Sheng Decl., Ex. J, Dkt. No. 29-1 at 36-37. On May 24, 2016, Plaintiff had the EMG
4 study, performed by Dr. Siegel, at San Mateo Medical Center. Sheng Decl., Ex. K; Dkt.
5 No. 29-1 at 39-42.

6 On June 27, 2016, Plaintiff had another follow-up visit with Dr. Fong. Fong Decl. ¶
7 5. Plaintiff reported 0/10 pain at this visit, his examination was unchanged, and Dr. Fong's
8 assessment remained the same. *Id.* At the time, Dr. Fong thought Plaintiff might benefit
9 from a tendon transfer procedure for his symptoms, but that it would be prudent to wait a
10 year to see what function returned and then to consider a tendon transfer procedure at that
11 time if there was no meaningful recovery of function. *Id.* The tendon transfer procedure is
12 elective and can be done at any time. *Id.* ¶ 9. In Plaintiff's case, there was no particular
13 window of opportunity to have the procedure done. *Id.* Nevertheless, Dr. Fong believed it
14 would be a good case to refer to the Stanford Hand & Upper Extremity Center for their
15 opinion. *Id.* ¶ 5, Ex. D, Dkt. No. 29-1 at 89-90; Sheng Decl., Exs. L, M, Dkt. No. 29-1 at
16 44-45, 47-48. Dr. Fong submitted a referral request to Stanford. Fong Decl. ¶ 6, Ex. E,
17 Dkt. No. 29-1 at 92-93.

18 On July 22, 2016, Dr. Fong received correspondence from Stanford, declining the
19 referral because the patient – Plaintiff – was in jail, they cannot see him in the clinic until
20 he was released from the system. Fong Decl. ¶ 7, Ex. F, Dkt. No. 29-1 at 95; Sheng Decl.,
21 Ex. N, Dkt. No. 29-1 at 50.

22 On December 2, 2016, Plaintiff had another follow-up visit with Dr. Fong. Fong
23 Decl. ¶ 8. Plaintiff reported 0/10 pain and little improvement in his hand function since his
24 last visit. *Id.* Plaintiff continued to complain of loss of ring finger and small finger
25 extension, but otherwise had normal extension of his index and middle fingers, and
26 intrinsic function of his hand muscles was present. *Id.* ¶ 12. Dr. Fong noted that Plaintiff
27 would most likely benefit from a tendon transfer procedure and had been hoping for an
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1 opinion from Stanford since he did not perform tendon transfers. *Id.* ¶ 8. However, since
2 Stanford previously stated it would not see Plaintiff until he was released from the system,
3 a further referral to them would be futile since Plaintiff was still incarcerated. *Id.*, Ex. G,
4 Dkt. No. 29-1 at 97-98; Sheng Decl., Ex. P, Dkt. No. 29-1 at 52-53. This was the last
5 follow-up visit Plaintiff had with Dr. Fong. Fong Decl. ¶ 12.

6 In between his last two follow-up visits with Dr. Fong, Plaintiff was scheduled for a
7 six-month physical exam on October 21, 2016, but he refused to be seen. Sheng Decl., Ex.
8 O, Dkt. No. 31-1 at 32. About two months later, on December 23, 2016, Plaintiff had a
9 six-month physical exam with Defendant Amanda Angueloch, FNP. *Id.*, Ex. Q. Dkt. No.
10 29-1 at 55. Then about a year later, on December 8, 2017, Plaintiff had an annual exam
11 again with Defendant Angueloch. *Id.*, Ex. R, Dkt. No. 29-1 at 57.

12 From December 2017 until July 30, 2018, when he was transferred from MCF to
13 the California Department of Corrections, Plaintiff's medical records contain no record of
14 him making any complaints to Defendant Spencer or any other SMCCM staff regarding
15 his arm/hand symptoms from his gunshot wound. Sheng Decl., Ex. S; Dkt. No. 29-1 at 59-
16 79.

17 **II. Summary Judgment**

18 Summary judgment is proper where the pleadings, discovery and affidavits show
19 that there is "no genuine dispute as to any material fact and the movant is entitled to
20 judgment as a matter of law." Fed. R. Civ. P. 56(a). A court will grant summary judgment
21 "against a party who fails to make a showing sufficient to establish the existence of an
22 element essential to that party's case, and on which that party will bear the burden of proof
23 at trial . . . since a complete failure of proof concerning an essential element of the
24 nonmoving party's case necessarily renders all other facts immaterial." *Celotex Corp. v.*
25 *Cattrett*, 477 U.S. 317, 322-23 (1986). A fact is material if it might affect the outcome of
26 the lawsuit under governing law, and a dispute about such a material fact is genuine "if the
27 evidence is such that a reasonable jury could return a verdict for the nonmoving party."
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1 *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986).

2 Generally, the moving party bears the initial burden of identifying those portions of
3 the record which demonstrate the absence of a genuine issue of material fact. *See Celotex*
4 *Corp.*, 477 U.S. at 323. Where the moving party will have the burden of proof on an issue
5 at trial, it must affirmatively demonstrate that no reasonable trier of fact could find other
6 than for the moving party. But on an issue for which the opposing party will have the
7 burden of proof at trial, the moving party need only point out “that there is an absence of
8 evidence to support the nonmoving party’s case.” *Id.* at 325. If the evidence in opposition
9 to the motion is merely colorable, or is not significantly probative, summary judgment may
10 be granted. *See Liberty Lobby*, 477 U.S. at 249-50.

11 The burden then shifts to the nonmoving party to “go beyond the pleadings and by
12 her own affidavits, or by the ‘depositions, answers to interrogatories, and admissions on
13 file,’ designate specific facts showing that there is a genuine issue for trial.” *Celotex*
14 *Corp.*, 477 U.S. at 324 (citations omitted); Fed. R. Civ. P. 56(e). “This burden is not a
15 light one. The non-moving party must show more than the mere existence of a scintilla of
16 evidence.” *In re Oracle Corporation Securities Litigation*, 627 F.3d 376, 387 (9th Cir.
17 2010) (citing *Liberty Lobby*, 477 U.S. at 252). “The non-moving party must do more than
18 show there is some ‘metaphysical doubt’ as to the material facts at issue.” *Id.* (citing
19 *Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986)). “In
20 fact, the non-moving party must come forth with evidence from which a jury could
21 reasonably render a verdict in the non-moving party’s favor.” *Id.* (citing *Liberty Lobby*,
22 477 U.S. at 252). If the nonmoving party fails to make this showing, “the moving party is
23 entitled to judgment as a matter of law.” *Celotex Corp.*, 477 U.S. at 323.

24 The Court’s function on a summary judgment motion is not to make credibility
25 determinations or weigh conflicting evidence with respect to a material fact. *See T.W.*
26 *Elec. Serv., Inc. V. Pacific Elec. Contractors Ass’n*, 809 F.2d 626, 630 (9th Cir. 1987).
27 The evidence must be viewed in the light most favorable to the nonmoving party, and the
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1 inferences to be drawn from the facts must be viewed in a light most favorable to the
 2 nonmoving party. *See id.* at 631. It is not the task of the district court to scour the record
 3 in search of a genuine issue of triable fact. *Keenan v. Allen*, 91 F.3d 1275, 1279 (9th Cir.
 4 1996). The nonmoving party has the burden of identifying with reasonable particularity
 5 the evidence that precludes summary judgment. *Id.* If the nonmoving party fails to do so,
 6 the district court may properly grant summary judgment in favor of the moving party. *See*
 7 *id.*; *see, e.g., Carmen v. San Francisco Unified School District*, 237 F.3d 1026, 1028-29
 8 (9th Cir. 2001).

9 **A. Deliberate Indifference**

10 Deliberate indifference to a prisoner's serious medical needs violates the Eighth
 11 Amendment. *Estelle v. Gamble*, 429 U.S. 97, 104 (1976). A prison official violates the
 12 Eighth Amendment only when two requirements are met: (1) the deprivation alleged is,
 13 objectively, sufficiently serious, and (2) the official is, subjectively, deliberately indifferent
 14 to the inmate's health or safety. *See Farmer v. Brennan*, 511 U.S. 825, 834 (1994).

15 A "serious" medical need exists if the failure to treat a prisoner's condition could
 16 result in further significant injury or the "unnecessary and wanton infliction of pain." *Id.*
 17 The following are examples of indications that a prisoner has a "serious" need for medical
 18 treatment: the existence of an injury that a reasonable doctor or patient would find
 19 important and worthy of comment or treatment; the presence of a medical condition that
 20 significantly affects an individual's daily activities; or the existence of chronic and
 21 substantial pain. *McGuckin v. Smith*, 974 F.2d 1050, 1059-60 (9th Cir. 1992), overruled
 22 on other grounds, *WMX Technologies, Inc. v. Miller*, 104 F.3d 1133, 1136 (9th Cir. 1997)
 23 (en banc).

24 A prison official is deliberately indifferent if he knows that a prisoner faces a
 25 substantial risk of serious harm and disregards that risk by failing to take reasonable steps
 26 to abate it. *See Farmer*, 511 U.S. at 837. The official must both know of "facts from
 27 which the inference could be drawn" that an excessive risk of harm exists, and he must
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1 actually draw that inference. *Id.* If a prison official should have been aware of the risk,
2 but was not, then the official has not violated the Eighth Amendment, no matter how
3 severe the risk. *Gibson v. County of Washoe*, 290 F.3d 1175, 1188 (9th Cir. 2002).

4 Defendants assert that Plaintiff cannot establish deliberate indifference to serious
5 medical needs because he cannot establish that they knew of and disregarded an excessive
6 risk to his health and safety, and that any alleged delay they caused in treatment led to
7 further injury. Dkt. No. 31 at 11. Defendants first assert that Dr. Fong's declaration
8 establishes that Plaintiff's hand complaints never presented an excessive risk to his health
9 and safety, and that any delay in getting an elective tendon transfer procedure did not lead
10 to further injury. *Id.* Defendants also assert that there are no triable issues of material fact
11 with respect to any of Plaintiff's principal allegations offered in support of his deliberate
12 indifference claim, specifically that they (1) delayed an EMG test until December 2, 2016;
13 (2) failed to follow up on a referral to Stanford for surgery as ordered by Dr. Fong; and (3)
14 failed to act upon his numerous grievance complaints. Dkt. No. 10 at 4-5.

15 Based on the evidence submitted and viewing it in the light most favorable to
16 Plaintiff, the Court finds there is an absence of disputed material facts with respect to the
17 issue of whether Plaintiff suffered from a serious medical condition which required surgery
18 to satisfy the first element of a deliberate indifference claim. The medical records
19 submitted by Defendants show that Plaintiff received consistent and ongoing care for his
20 gunshot wound by nursing staff, Family Nurse Practitioners like Defendant Anguelouch,
21 and medical doctors like Defendant Spencer, including dressing changes, medication and
22 evaluations, after he arrived at MCF on February 11, 2016. *See supra* at 3-6. Defendant
23 Spencer personally saw and evaluated Plaintiff and ordered an X-ray on April 26, 2016.
24 *Id.* at 4. When a visiting orthopedist recommended a referral to plastic surgery, Plaintiff
25 was promptly referred and began meeting with Dr. Fong about a month later, on May 2,
26 2016. *Id.* at 4. Thereafter Plaintiff met with Dr. Fong several times for treatment for his
27 hand complaints. *Id.* at 4-5. Dr. Fong states in his declaration that at their third meeting
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1 on June 27, 2016, when Plaintiff's condition remained unchanged, he believed that
2 Plaintiff might benefit from a tendon transfer procedure but that it would be prudent to still
3 wait a year to see if function returned before considering it. *Id.* Dr. Fong states that the
4 tendon transfer procedure was elective and could be done at any time. *Id.* at 5. He also
5 states that there was no particular window of opportunity to have the procedure done. *Id.*
6 Furthermore, Dr. Fong states that there was no present nor any past emergency or urgent
7 need for Plaintiff to undergo a tendon transfer procedure for his symptoms, and that in his
8 medical opinion, no further harm or injury has resulted or will result to Plaintiff by waiting
9 until some future date to have the tendon transfer procedure. *Id.* ¶ 10. Moreover, Dr. Fong
10 states that the lack of the tendon transfer procedure in the past has not caused Plaintiff to
11 suffer from any pain, as indicated by the "0/10" pain reported by Plaintiff at each of his
12 visits with Dr. Fong. *Id.* ¶ 11. Based on his physical examination of Plaintiff and his
13 statements to him, Dr. Fong states that Plaintiff did not have any complaints of pain in his
14 right hand such that postponing the procedure to some point in the future will not cause
15 him to suffer from any pain. *Id.* Lastly, Dr. Fong states that the hand symptoms that
16 Plaintiff presented with never posed an excessive risk to his health or safety, nor would
17 they significantly impair him from performing activities of daily living. *Id.* ¶ 12. In
18 opposition, Plaintiff has filed no response to indicate that any of these facts are in dispute,
19 and none of his statements in the amended complaint provide sufficient evidence to create
20 a triable issue of fact. Accordingly, Plaintiff has failed to establish a genuine dispute of
21 material fact as to whether he suffered from a serious medical condition which, without an
22 elective procedure, would result in further significant injury or the "unnecessary and
23 wanton infliction of pain." *See Farmer*, 511 U.S. at 834. Defendants are therefore entitled
24 to summary judgment on this claim. *See Celotex Corp.*, 477 U.S. at 323.

25 Furthermore, Defendants have submitted evidence showing there is an absence of a
26 genuine dispute of material fact with respect to Plaintiff's specific allegations against them
27 with respect to the following: (1) Defendants delayed an EMG test until December 2,
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2016; (2) they failed to follow up on a referral to Stanford for surgery as ordered by Dr. Fong; and (3) they failed to act upon his numerous grievance complaints.

With respect to the first allegation, Dr. Fong's declaration and the medical records show that Dr. Fong ordered an EMG following his first examination of Plaintiff on May 2, 2016. *See supra* at 4. The EMG was performed approximately 3 weeks later, on May 24, 2016. *Id.* Therefore, there is no evidence that Defendants delayed an EMG until December 2, 2016, as Plaintiff alleges, since he received the EMG six months earlier. Plaintiff has filed no response to refute these facts, and none of his statements in the amended complaint provide sufficient evidence to create a triable issue of fact on this claim. Accordingly, Defendants have established that there is an absence of evidence to support Plaintiff's claim and is therefore entitled to summary judgment on this claim. *See Celotex Corp.*, 477 U.S. at 323, 325.

Secondly, Dr. Fong's declaration shows that he was the one who made the initial referral to Stanford on June 27, 2016, and that he received a response on July 22, 2016, stating that they cannot see Plaintiff until he was released from the system. *Id.* at 5. When Dr. Fong saw Plaintiff for the last time on December 2, 2016, he still believed that a referral to Stanford would be helpful. *Id.* However, because Stanford's response to his first referral stated clearly that they would not see Plaintiff until he was released and because they could not be compelled to accept a patient referral, another attempt to refer the matter to Stanford would have been futile, as Defendants point out. Dkt. No. 31 at 12. Defendant Spencer also states in his declaration that Plaintiff was still within the three-year period of time for his injury to be monitored, in accordance with the medical standard of care, and therefore the lack of a second referral does not rise to the level of a constitutional violation. Spencer Decl. ¶ 21. Based on the evidence submitted by Defendants, the lack of a follow-up may indicate a negligence or malpractice claim at best, but not deliberate indifference to a serious medical need. *McGuckin*, 974 F.2d at 1059 (mere negligence in diagnosing or treating a medical condition, without more, does not violate a prisoner's 8th

1 Amendment rights). Plaintiff has filed no response to indicate otherwise, and none of his
2 statements in the amended complaint provide sufficient evidence to create a triable issue of
3 fact on this claim. Accordingly, Defendants are entitled to summary judgment on this
4 claim. *See Celotex Corp.*, 477 U.S. at 323, 325.

5 Lastly, Plaintiff claims that “Doctor Spencer and nurse practitioners failure to act on
6 [Plaintiff’s] medical need for surgery, not available at jail facility, and upon [Plaintiff’s]
7 own grievance complaints submitted on: March 21, 2016; July 18th, 2016; May 22nd,
8 2018 has caused [Plaintiff] continuous pain, and suffering [Plaintiff’s] disability which is
9 interfering with his life activities for [Plaintiff’s] lifetime.” Dkt. No. 10 at 4. Defendants
10 assert that these allegations are factually incorrect and demonstrate that Plaintiff does not
11 have affirmative evidence sufficiently probative to carry his ultimate burden of persuasion
12 at trial. Dkt. No. 31 at 13. First with respect to the grievances allegedly filed on March 21
13 and July 28, 2016, Defendants assert that records subpoenaed from the San Mateo County
14 Sheriff’s Office show that Plaintiff submitted only two grievances related to medical issues
15 in 2016: (1) a July 13, 2016 grievance complaining that he notified medical staff about a
16 tumor-like growth in his lower spine, but was not seen by a nurse or doctor; and (2) a July
17 18, 2016 grievance complaining about unauthorized transaction withdraws for medical co-
18 pays. Sheng Decl., Exs. T, U; Dkt. No. 31-1 at 38, 40-41. A review of these records
19 indeed shows that neither of these grievances relate to hand injury at issue in this case. In
20 contrast, Plaintiff’s medical records show that throughout 2016 he was seen for his hand
21 injury by various providers, including Defendants Angueloch and Spencer, as well as a
22 radiologist (X-ray), an orthopedist, a neurologist (EMG), and a plastic surgeon. *See supra*
23 at 2-6. These facts are undisputed, and Plaintiff has failed to respond with any evidence
24 establishing otherwise. Lastly, Plaintiff did submit a grievance on May 22, 2018, as he
25 claims, as confirmed by the records subpoenaed from the Sheriff’s Department. Sheng
26 Decl., Ex. V; Dkt. No. 31-1 at 43. However, Plaintiff claimed in that grievance that he was
27 “denied medical care on 5/21/18; unknown medical personnel intentionally failed to render

1 medical services upon multiple health care service requests; unknown medical personnel
2 failed and refused [Plaintiff's] right to medical privacy by failing to wear badges showing
3 licensing credentials or identifying their names." Sheng Decl., Ex. V; Dkt. No. 31-1 at 43.
4 Apparently, this grievance was filed in response to an incident on May 21, 2018, when a
5 nurse, who is not a party to this action, came to speak to Plaintiff in response to a medical
6 request to see a doctor. Sheng Decl., Ex. W; Dkt. No. 29-1 at 81. Plaintiff repeatedly
7 demanded to be "put... down to see the Dr." but refused to explain the reason why he
8 needed to see a doctor. *Id.* The nurse noted that Plaintiff "became increasingly angry,
9 hostile and aggressive" and threatened to send a grievance to medical while yelling
10 obscenities. *Id.* The nurse noted "[n]o further action taken due to angry/hostile nature of
11 inmate and safety concerns." *Id.* The Court agrees with Defendants that this grievance is
12 not relevant to the claims in this action involving treatment for his gunshot wound against
13 Defendants Spencer and Anguelouch who are not mentioned in the grievance at all.
14 Plaintiff has filed no response to establish otherwise, and none of his statements in the
15 amended complaint provide sufficient evidence to create a triable issue of fact on this
16 claim. Accordingly, Defendants are entitled to summary judgment on this claim. *See*
17 *Celotex Corp.*, 477 U.S. at 323, 325.

18 Based on the foregoing, Defendants have established the absence of a genuine issue
19 of material fact with regard to the Eighth Amendment claim against them. *See Celotex*
20 *Corp.*, 477 U.S. at 323. In response, Plaintiff, having filed no opposition, has failed to
21 identify with reasonable particularity the evidence that precludes summary judgment, *id.* at
22 324; *Keenan*, 91 F.3d at 1279, or to come forth with evidence from which a jury could
23 reasonably render a verdict in his favor, *In re Oracle Corporation Securities Litigation*,
24 627 F.3d at 387; *Liberty Lobby*, 477 U.S. at 25. Accordingly, Defendants are entitled to
25 summary judgment on this claim. *Celotex Corp.*, 477 U.S. at 323.

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CONCLUSION

For the reasons stated above, Defendants Dr. Robert Spencer and Nurse Practitioner Amanda Anguelouch's motion for summary judgment is **GRANTED**. Dkt. No. 31. The Eighth Amendment claims against them are **DISMISSED with prejudice**.⁴

This order terminates Docket No. 31.

IT IS SO ORDERED.

Dated: __November 20, 2020__


BETH LABSON FREEMAN
United States District Judge

United States District Court
Northern District of California

Order Granting MSJ
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⁴ Because the Court finds no constitutional violation occurred, it is not necessary to discuss Defendants' qualified immunity argument.